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A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Justice S.R.Nayak, Chief Justice

Writ Petition No.5037/1997

PETITIONER : Akheraj Lunia, Mine Owner and Contractor, "Century Cement", Post Office Baikunth - 493 116, Distt. Raipur (C.G.)

Versus

RESPONDENTS :
1. Union of India, through - Secretary, Law, New Delhi.
2. State of Chhattisgarh, through-the Secretary, Mines and Minerals, D.K.S.Building Raipur (C.G.)
3. The Collector (Mining Officer), Raipur (C.G.)

Writ Petition No.4429/1997

PETITIONERS :
1. Raymond Limited, having its Registered Office at Plot No.156/H. No.2, Village Jadgaon, Ratnagiri (Maharashtra State) and having its Cement Division at Gopal Nagar, Bilaspur (M.P.) through Shri Dipankar Sen, Deputy Manager (Law)
2. Dipankar Sen, son of Shri S. Sen, aged 43 years, Shareholder of M/s Raymond Limited, resident of 14/216, Vinoba Nagar, Bilaspur (M.P.)

Versus

RESPONDENTS :
1. The State of Madhya Pradesh, through the Secretary, Department of Mineral Resources, Vallabh Bhawan, Bhopal - 462 004.
2. The Collector, Bilaspur. (M.P.)
3. The Additional Collector, Bilaspur (M.P.)
4. The Union of India, Through the Secretary, Ministry of Steel and Mines Department of Mines, New Delhi.

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Writ Petition No.6/1998

PETITIONER : Associated Cement Companies Ltd. A Limited Company, having is Registered Office at Mumbai and Unit at "JAMUL CEMENT WORKS' JAMUL, Distt. Durg (C.G.)

Versus

RESPONDENTS :
1. Union of India, Through: Secretary, Law, NEW DELHI.
2. State of Chhattisgarh, through-the Secretary, Mines and Minerals Resources, Mantralay, D.K.S.Bhawan, Raipur (C.G.)
3. Collector (Mining Officer), DURG (C.G.)

Writ Petition No.5035/1997

PETITIONER : Century Textiles and Industries Ltd, A Registered Limited Company, Registered under the Companies Act, having its Registered office at Dr. Annie Basant Road, Bombay and Unit at Baikunth, by name "CENTURY CEMENT", Po Bikunth, Distt. Raipur (C.G.)

Versus

RESPONDENTS :
1. Union of India, through: Secretary, Law, New Delhi.
2. State of Chhattisgarh, through-the Secretary, Mines and Minerals, D.K.S.Bhawan, Mantralay,Raipur (C.G.)
3. Collector (Mining Officer), Raipur (C.G.)

Shri Manindra Shrivastava, Sr. Counsel with Shri Ashish Shrivastava and Shri Amrito Das, Counsel for the petitioner (W.P.Nos. 5037/1997, 6/98 and 5035/1997.

Shri B.P.Sharma, Counsel for the petitioner (W.P.No.4429/97)

Shri Vinay Harit, G.A. for the State of Chhattisgarh.

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ORAL ORDER
(Passed on 23.2.2006)

Having heard the learned counsel for the parties and in the light of the judgment of the Apex Court in the case of **District Mining Officer and Others v. Tata Iron and Steel Co. And another**[1], I am of the considered opinion that the impugned demand notices have to be quashed. The only question that arises for decision-making is whether the petitioners are entitled to seek refund of the cess paid by them to the State Government in pursuance of the demands raised subsequent to 4.4.1991 with regard to cess collectable prior to 4.4.1991. According to Shri Manindra Shrivastava, learned senior counsel who argued on behalf of the petitioners, this point is also squarely covered by the judgment of the Apex Court in the case of Tata Iron and Steel Company whereas according to Shri Vinay Harit, learned senior counsel for the Department, this precise question is not dealt with by the Supreme Court and since the petitioners have voluntarily paid the cess in response to the notices issued to them and the cess so paid is a cess collectable towards the period anterior to 4.4.1991, they are not entitled to seek refund of the cess so collected.

2. Having perused the above judgment of the Supreme Court, I have absolutely no doubt in my mind to say that the contention of the learned senior Counsel for the Department is totally untenable. The Supreme Court in more than one places in the judgment in the case of **Tata Iron and Steel Company** has opined that the Cess and Other Taxes on Minerals (Validation) Act, 1992 (Validation Act No.16 of 1992) (hereinafter referred to as 'the Validation Act') has not enacted any provision enabling the State to collect collectable cess for a period prior to 4.4.1991, after 4.4.1991. It is also held by the

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Apex Court that the Validation Act had operation only upto 4.4.1991. In other words, according to the Hon'ble Supreme Court, after 4.4.1991, the provisions of the Validation Act could not be pressed into service after 4.4.1991 to collect even collectable tax due with regard to a period which is anterior to 4.4.1991. The reasoning of the Apex Court goes to show that after 4.4.1991, it would be totally illegal for the State to raise a demand for payment of cess collectable for any period anterior to 4.4.1991. If this is the sum and substance of several declarations made by the Apex Court in the case of **Tata Iron and Steel Company**, even assuming that the petitioners had voluntarily paid cess (that assertion of the State was seriously disputed by the petitioners) in pursuance of the demands raised by the State Authority, as stated by the learned senior counsel for the Department, that circumstance would never be a justification for the State not to refund the cess so collected for the simple reason that in whatever mode, voluntarily or involuntarily the taxes are collected by the State, such collection would be *per se* illegal and unauthorized. The State should have legal authority to collect tax, otherwise, its action would be unconstitutional being violative of Article 265 of the Constitution. Admittedly, in all these cases, the demands were raised only after 4.4.1991 directing the petitioners to pay cess on royalty payable for a period anterior to 4.4.1991.

4. In the result and for the foregoing reasons, I allow all these writ petitions and quash the impugned demand notices. A direction shall issue to the respondents to refund the cess wherever such cesses are recovered or paid by the petitioners in pursuance of the impugned notices, within a period of three months from the date of receipt of the copy of this order.

5. In the facts and circumstances, the parties shall bear their respective costs in these writ petitions.

Sd/-
Chief Justice

Anjani